THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES M. SCHWEITZER, JIMMIE A. HARROD
and JEFFREY J. BOREALI

Appeal No. 1997-4389
Application No. 08/546,925

ON BRIEF

Before COHEN, FRANKFORT, and NASE, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 14, which are all of the claims pending in this application.[1]

We REVERSE.

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[1] Claim 8 was amended subsequent to the final rejection.

BACKGROUND

The appellants' claims under appeal[2] relate to the following three distinct inventions[3]:

1. Claims 1 to 7 and 14 are drawn to a dispensing mechanism for linerless labels each having a pressure sensitive adhesive face and an adhesive-release material coated face, said mechanism comprising, inter alia, a housing including a stripper surface of adhesive-release material for engaging the pressure sensitive adhesive face of the linerless labels and an exit opening for supplying linerless labels from the mechanism along a predetermined path; an anvil blade adjacent the stripper surface for engaging the pressure sensitive adhesive face of the linerless labels; a cutter cooperating with the anvil blade for cutting the labels for engaging the release material coated face of the linerless labels; and a plate carried by the housing and extending outwardly of the exit

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[2] A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

[3] The examiner did not require the application to be restricted under 35 U.S.C. § 121 to one of the inventions.

opening, the plate being angled to form an obtuse angle with the predetermined path[4] and lying along the pressure sensitive adhesive face of the linerless label passing through the exit opening for deviating the label from the predetermined path by contact with the pressure sensitive adhesive face of the label.

2. Claims 8 to 11 are drawn to a cutting mechanism for linerless labels each having a pressure sensitive adhesive face and an adhesive-release material coated face, said mechanism
comprising, inter alia, a stripper surface of adhesive-release material for engaging the pressure sensitive adhesive face of the linerless labels; an anvil blade adjacent the stripper surface; a rotary cutter cooperating with the blade for cutting the labels; and a wiper impregnated with silicone oil for wiping the rotary cutter to prevent build up of adhesive

[4] From our reading of the specification (e.g., pages 6-7), we understand that this obtuse angle is shown in Figure 1B to be the angle measured from the top surface area of the plate (unidentified in the figure) in a clockwise direction to the predetermined path.

on the rotary cutter, the wiper being formed of an open-cell material.

3. Claims 12 and 13 are drawn to a linerless label dispenser comprising, inter alia, a support for a supply of continuous form linerless labels wound on a core, each label having a pressure sensitive adhesive face and an adhesive-release material coated face, the support including a hub mounted for rotation and having a contact area with the core in excess of 50% of the area of the core of the supply of linerless labels; a guide structure for engaging the labels from the supply of labels; a printhead for printing the release material coated face of the labels; a stripper surface on the opposite side of the printhead and formed of adhesive-release material; an anvil blade; and a rotatory cutter cooperating with the anvil blade for cutting individual labels to be dispensed from the supply of continuous form of linerless labels.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Molins	1,738,076	Dec. 3, 1929
Smith	3,433,355	Mar. 18, 1969
Putzke	4,297,930	Nov. 3, 1981
Jones	4,978,415	Dec. 18, 1990
Michalovic	5,375,752	Dec. 27, 1994
Carpenter et al. (Carpenter)	5,524,996	June 11, 1996 (filed Nov. 22, 1994)

Claims 1 to 7 and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Carpenter in view of Molins, Putzke and Michalovic.

Claims 8 to 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Carpenter in view of Molins, Michalovic and Jones.

Claims 12 and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Carpenter in view of Molins, Michalovic and Smith.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 14, mailed April 29, 1997) and the supplemental answer (Paper No. 16, mailed September 22, 1997) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 13, filed April 1, 1997), reply brief (Paper No. 15, filed June 30, 1997) and supplemental reply brief (Paper No. 17, filed October 2, 1997) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art, and to the respective positions articulated by the appellants and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejections of claims 1 to 14 under

35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

Claims 1 to 7 and 14

Claim 1 requires the dispensing mechanism to include a plate carried by the housing and extending outwardly of the exit opening, the plate being angled to form an obtuse angle with the predetermined path and lying along the pressure sensitive adhesive face of the linerless label passing through the exit opening for deviating the label from the

predetermined path by contact with the pressure sensitive adhesive face of the label.

The examiner determined (answer, p. 5) that it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified plate 105 of Carpenter to extend outwardly of the exit opening and to be angled to form an obtuse angle with respect to the path in view of the teachings of Putzke in which cut items are deposited onto support 52 carried by the housing (see Figures 1 and 3 of Putzke). We do not agree.

The appellants argue (brief, pp. 5-10) that there is no suggestion in the applied prior art to have modified Carpenter by the teachings of Putzke to have arrived at the plate as recited in claim 1. We agree.

It is clear from our review of the applied prior art that the above-noted plate limitations of claim 1 are not suggested by the applied prior art. In that regard, Carpenter's element 105 is disclosed (column 3, lines 25-35) as being a transport

which is moved laterally in a track 107 between a position in alignment with opening 103 to a position in alignment with a window 109 (see Figure 1). When the label is deposited on the transport 105, it is held in place by a low vacuum carrier, applied to the label through the carrier. When the label is to be transferred to an envelope or the like, the head of the transport 105 is moved upwardly by an air cylinder (not shown in the drawing) to transfer the label through the window 109 and onto an object to be labeled. Putzke teaches (column 4, lines 41-48) that a film strip is cut between a knife 44 and an anvil 42 and the separated segments of negative film exit through a slot 48 and fall into a tray 52 positioned below the slot 48 and affixed to an end wall 50 from which they can be removed by an operator and packaged for return to the customer.

In our view, the suggestion for modifying the applied prior art to meet all of the above-noted limitations comes not from the combined teachings of the applied prior art but stems from hindsight knowledge derived from the appellants' own

disclosure.[5] In that regard, even if the transport 105 of Carpenter were replaced with a tray as taught by Putzke, the resulting structure would not have a plate capable of causing a label to deviate from the predetermined path by contact with the pressure sensitive adhesive face of the label. Such teaching comes only from the appellants' disclosure. It follows that we cannot sustain the examiner's rejections of claims 1 to 7 and 14.

Claims 8 to 11

The appellants argue (reply brief, p. 6) that the applied prior art does not suggest the claimed subject matter of claims 8 to 11. Specifically, the appellants argue that Jones teaches away from the claimed wiper being formed of an open cell material since Jones discloses that the outer covering 70A of each sleeve 68A is of a closed cell neoprene rubber foam. We agree.

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[5] The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

Claims 8 to 11 require the cutting mechanism to include a wiper impregnated with silicone oil for wiping the rotary cutter to prevent build up of adhesive on the rotary cutter, "the wiper being formed of an open-cell material." It is clear from our review of the applied prior art that these limitations are not suggested by the applied prior art. While the examiner found (answer, p. 12) that Jones sleeve 68A is of an **open cell foam**, we fail to find that teaching in Jones. In fact, Jones specifically teaches that the material is a **closed cell foam** (see e.g., column 2, lines 64-66; column 3, lines 17-22; column 9, lines 7-9 and 15).

In our view, the suggestion for modifying the applied prior art to meet all of the above-noted limitations comes not from the combined teachings of the applied prior art but stems from hindsight knowledge derived from the appellants' own disclosure. As stated previously, the use of such knowledge to support an obviousness rejection under 35 U.S.C. § 103 is impermissible. It follows that we cannot sustain the examiner's rejections of claims 8 to 11.

Claims 12 and 13

The appellants argue (brief, p. 13) that the applied prior art does not suggest the claimed subject matter of claims 12 and 13. Specifically, the appellants argue that Smith does not teach or suggest the claimed hub mounted for rotation and having a contact area with the core in excess of 50% of the area of the core of the supply of linerless labels. We agree.

Claims 12 and 13 require the linerless label dispenser to include a hub mounted for rotation and having a contact area with the core in excess of 50% of the area of the core of the supply of linerless labels. It is clear from our review of the applied prior art that these limitations are not suggested by the applied prior art. While the examiner found (answer, p. 15) that Smith teaches a hub made of parts 10, 12, 14 having a contact area with the core in excess of 50% of the area of the core, we fail to find that teaching in Smith. In fact, Smith teaches that his tape roll includes core segments 10, 12, and 14. Thus, segments 10, 12, and 14 are the core of the tape roll. Our review of Smith reveals that Smith

contains no teaching of a hub mounted for rotation and having a contact area with the core in excess of 50% of the area of the core of the tape roll.

Once again, it is our view that the only suggestion for modifying the applied prior art to meet all of the above-noted limitations comes not from the combined teachings of the applied prior art but stems from hindsight knowledge derived from the appellants' own disclosure. It follows that we cannot sustain the examiner's rejections of claims 12 and 13.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 14 under 35 U.S.C. § 103 is reversed.

REVERSED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
CHARLES E. FRANKFORT Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JEFFREY V. NASE Administrative Patent Judge	)	

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